

Appl. No.10/705,327
Atty. Docket No. AA 547C
Amdt. dated 12/20/04
Reply to Office Action of 09/20/04
Customer No. 27752

REMARKS

Claim Status

Claims 1-11 are pending in the present application. No additional claims fee is believed to be due.

Rejection Under 35 USC §103(a) Over Evans et al. (U.S. 5,750,122), in further view of Tsunetsugu et al. (WO 00/61083) and of JP 002188044.

Claims 1-11 have been rejected under 35 USC §103(a) as being obvious in view of Evans et al. (U.S. 5,750,122, hereinafter "Evans"), in further view of Tsunetsugu et al. (WO 00/61083, hereinafter "Tsunetsugu"), in further view of JP 002188044. The reference JP 002188044 refers to a data transmission system, and appears to be unrelated to the present invention. Applicants therefore are unable to respond fully to the Office Action's assertions in regard to this reference. Applicants respectfully request that Examiner please confirm the correct number of the cited reference.

The present invention relates to transparent skin care compositions having improved shear thinning properties, improved feel, and effective control of skin oil, or sebum, production. The Office Action asserts that Example 21 of Evans, combined with Example 1 of Tsunetsugu and with the cellulose taught in JP 002188044, renders the present invention obvious. Applicants respectfully traverse, and assert that the Office Action fails to establish a *prima facie* case of obviousness.

According to *In re Vaeck*, 20 USPQ2d 1438:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Applicants assert that there is no suggestion or motivation to combine the teachings of the cited art. One important aspect of the compositions of the instant invention is the shear thinning property. This means that when "shear stress" is applied to the composition, for example, by rubbing onto the skin, the viscosity of the composition significantly decreases. This results in a desirable "watery feel" to the composition. Applicants have found that the carboxylic acid copolymer gives rise to this

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shear thinning property when the viscosity of the composition, prior to applying "shear stress," is from about 100 to about 6,000 mPa.s. See p. 4, line 30 to page 5, line 10 of the specification.

The cited art teaches neither the desirability of this shear thinning property, nor how to achieve it. The compositions of Tsunetsugu contain no carboxylic acid copolymer. Evans discloses the use of a carboxylic acid copolymer, yet contains no teaching of its use to produce a shear thinning property, nor of compositions having a defined viscosity. The use of a carboxylic acid polymer in compositions of a given viscosity to produce a shear thinning property is not at all obvious. Therefore, one of skill in the art would not be motivated to combine Tsunetsugu with Evans to produce the compositions of the present invention.

An additional important aspect of the instant invention is the transparency of the compositions. The compositions taught in Evans are conventional emulsions, and provide no indication of transparency. One of skill in the art therefore would not be motivated to combine the compositions of Evans with those of Tsunetsugu, because this would not be expected to result in a transparent emulsion.

Finally, the Office Action states that neither Evans nor Tsunetsugu teach the use of cellulose powder, yet asserts JP 002188044 teaches the use of cellulose powder in cosmetic compositions. The instant invention includes cellulose in transparent compositions with shear thinning properties. It would not be obvious to include cellulose in these compositions, as there is no indication that this would provide oil control while maintaining the desired shear thinning property and transparency.

In summary, Applicants point out that to establish a *prima facie* case of obviousness, each of the elements set forth in *In re Vaeck* must be established. The cited art fails to teach or suggest the use of a carboxylic acid copolymer in compositions of a given viscosity to produce a shear thinning property. In addition, there is no suggestion or motivation to combine the cited references to produce compositions with the desired properties of shear thinning, transparency and oil control. For these reasons, Applicants assert that the Office Action fails to meet the burden required to establish a *prima facie* case of obviousness. Applicants respectfully request that these rejections be reconsidered and withdrawn.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 U.S.C. 103(a). Early and favorable action in the case is respectfully requested.

This response represents an earnest effort to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application and allowance of Claims 1-11 is respectfully requested.

Respectfully submitted,

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